Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
1998 Bienniel Regulatory Review – Reform of the International Settlements Policy and Associated Filing Requirements	IB Docket No. 98-148
Regulation of International Accounting Rates	CC Docket No. 90-337

COMMENTS

Level 3 Communications, LLC ("Level 3") hereby submits comments urging the Federal Communications Commission ("Commission" or "FCC") to narrow the application of the International Settlements Policy ("ISP") and its associated filing requirements while maintaining certain competitive safeguards to nurture an increasingly competitive global telecommunications market. Specifically, the FCC should (1) limit the scope of the ISP; (2) eliminate unduly burdensome filing requirements; (3) maximize confidential treatment of international arrangement terms; and (4) maintain competitive safeguards to prevent abuses of market power.

Level 3 has a strong interest in the outcome of this proceeding. As a rapidly emerging facilities-based provider of international communications services, Level 3 is poised to take advantage of the many opportunities afforded by the World Trade Organization Basic

Telecommunications Agreement ("WTO Agreement"). Thus, Level 3 applauds the FCC's efforts to promote competition worldwide and to streamline its regulations to allow U.S. carriers to take greater advantage of opportunities created by a more competitive environment. In promoting competition abroad and at home, however, the FCC properly realizes that the global telecommunications market is still in transition from a monopoly model to a competitive one. For that reason, Level 3 urges the Commission to tailor its rules and policies in a way that encourages competition while discouraging market distortions resulting from anticompetitive conduct.

I. Narrowing the Scope of the ISP Still Requires Certain Competitive Safeguards

Because the WTO Agreement and FCC polices have rapidly accelerated the pace of global liberalization of the telecommunications market, Level 3 fully supports narrowing the application of the ISP. Specifically, the ISP should no longer apply to most arrangements: (1) between U.S. carriers and foreign carriers that lack market power in WTO Member countries, especially where such carriers engage in self-correspondence; and (2) between U.S. carriers and all foreign carriers in countries to which the Commission has authorized international simple resale ("ISR").

The ISP should be retained, however, with respect to carrier agreements affecting 10 percent or more of the inbound or outbound traffic on a particular route. The Commission developed the ISP to address a global monopoly regime in which the U.S competitive market was the exception to the rule. The ISP's requirements of proportionate return, equal division of accounting rates and nondiscriminatory treatment of U.S. carriers have generally deterred monopoly carriers from "whipsawing" and discriminating against U.S. carriers, and thus created a level playing field. Now that competitive markets are increasingly the rule rather than the exception, however, the original justification for the ISP no longer applies to many arrangements between competitive players on both ends of a particular route. In fact, the continued application of the ISP on these routes can actually hinder the development of innovative, cost-effective arrangements, and thus impede competition. Therefore, adoption of the FCC's proposal to eliminate the ISP for certain arrangements between U.S. carriers and foreign carriers in WTO Member countries is critical to its continuing liberalization effort.

In narrowing the scope of the ISP, however, the Commission should retain oversight of agreements affecting more than 10% of traffic on a route.[1] For U.S. carriers, flexibility in making arrangements with carriers in competitive markets is essential to provide options for international routing of traffic. Moreover, U.S. carrier agreements with foreign carriers lacking market power in WTO Member countries should not be subject to the ISP because the foreign correspondent cannot whipsaw U.S. carriers. In addition, U.S. carrier agreements with carriers in markets to which the FCC has authorized ISR should not be subject to the ISP because the presence of competition in those markets prevents foreign carriers from leveraging their market power. To ensure that such markets continue to be competitive and free of barriers to entry, however, the FCC should maintain the ISP for U.S. carrier arrangements affecting more than 10 percent of the total inbound or outbound traffic on any WTO Member route or ISR-authorized route.[2] (In calculating the 10 percent

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[1] The most recently published FCC annual traffic and revenue report could easily serve as an accessible source for the total traffic figure for each route.

[2] In order to expedite the elimination of unnecessary regulatory requirements, Level 3 suggests that the Commission automatically authorize ISR on WTO Member routes that meet the benchmark condition. As FCC Staff monitor accounting rates on ISP routes, they could issue a public notice and/or automatically update the list of authorized countries on the FCC's website when a country satisfies the benchmark condition. This will eliminate the current burden placed on a single carrier to bear the cost of opening the ISR market on a particular route for the benefit of all other U.S. carriers.

threshold, the FCC should aggregate the traffic covered by multiple agreements between the same carriers on a particular route.) In suggesting this standard, Level 3 does not intend to put any carrier at a disadvantage, but rather, to preserve and enhance competition. Because a truly global competitive market is still in the nascent stages of development, there is still an opportunity for carriers to leverage their market power to negotiate more favorable rates, terms and conditions that will lock out other players on these competitive routes. An objective competitive safeguard can preclude the exercise of market power that could frustrate market entry and limit competitive market conditions without imposing an unduly burdensome regulatory mechanisms.

II. Eliminating ISP Filing Requirements Removes an Unnecessary Regulatory Burden

In addition to supporting the inapplicability of the ISP to certain agreements on competitive routes, Level 3 emphatically supports eliminating contract-filing requirements on these routes, including operating agreements and other carrier contracts[3] and accounting rate notifications and modification requests.[4] Moreover, Level 3 recommends that the FCC expressly eliminate these filing requirements with respect to all agreements between U.S. carriers and their foreign affiliates[5] that lack market power in their respective destination markets. As the FCC recognizes, "self-

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[3] *See* 47 C.F.R. § 43.51.

[4] *See* 47 C.F.R. § 64.1001.

[5] An "affiliation" with a "foreign carrier" is defined in Section 63.18(h)(1) of the Commission's Rules, 47 C.F.R. § 63.18(h)(1).

correspondence will soon become a global market reality,"[6] enabling U.S. carriers to enter liberalized markets and provide more cost-effective end-to-end services for U.S. consumers.

These filing requirements were originally developed as vehicles to monitor and enforce U.S. carrier compliance with the ISP. The removal of the ISP for arrangements on competitive routes, however, would eliminate the need to continue applying these protective measures that have become an administrative burden for both carriers and FCC Staff and serve no regulatory information requirement. Specifically, eliminating these filing requirements will enable carriers to concentrate their valuable resources on expanding their business, rather than on preparing, filing and constantly updating contract rates, terms and conditions that rapidly change, sometimes on a daily basis for often merely internal corporate reasons. Also, removing this administrative roadblock will allow FCC Staff to focus their limited resources on resolving more significant matters rather than gathering and maintaining this generally outdated information. A carrier's annual traffic and revenue report should provide the FCC sufficient information regarding a carrier's activities on any route on which the ISP is no longer applied. Moreover, knowing that the FCC will not require contract and accounting rate information to be filed for competitive arrangements will encourage U.S. and foreign carriers to negotiate more innovative, cost-effective agreements.

III. Confidential Treatment Will Promote Flexible Arrangements

To the extent that the ISP would continue to apply on a particular route, Level 3 supports the Commission's proposal to allow carriers to enter into flexible settlement arrangements affecting less

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[6] *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket Nos. 97-142 and 95-22, Report and Order on Reconsideration, 11 FCC 97-398 (rel. Nov. 26, 1997) ("*Foreign Participation Order*"), ¶ 237.

than 25 percent of the traffic on that route without identifying the foreign carrier and without filing the terms and conditions of the actual agreement. The FCC recognizes that its flexibility policy "relies on competitive market forces to determine call termination charges."[7] As more carriers enter the market to take advantage of these competitive market forces, the identity of their foreign correspondents, and the rates, terms and conditions of their agreements, become commercially sensitive information. Advance assurance that this information will remain completely confidential will encourage U.S. carriers to negotiate and submit flexible arrangements to the FCC without concern that their competitors will obtain this crucial information. In addition, as more carriers enter into flexible, innovative arrangements with carriers on non-competitive routes, the resulting downward pressure on the accounting rates may stimulate these markets to open their doors to competition.

IV. Competitive Safeguards are Still Necessary in an Emerging Competitive Environment

Level 3 also recommends that the Commission continue to apply certain competitive safeguards to ensure that carriers cannot leverage market power. Specifically, Level 3 recommends removing the "No Special Concessions" requirement with respect to most non-ISP arrangements. To address potential competitive distortions, however, Level 3 proposes that the "No Special Concessions" requirement continue to apply to special concessions that affect 10 percent or more of the total inbound or outbound traffic on an ISR-authorized route. These proposed modifications will afford all U.S. carriers opportunities to enter into innovative and tailored arrangements with foreign carriers, while precluding the exercise of market power to the detriment of competition.

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[7] *Regulation of International Accounting Rates*, CC Docket No. 90-337, Phase II, Fourth Report and Order, 11 FCC Rcd 20,063 (1996) ("*Flexibility Order*"), *recon. pending*, ¶ 22.

V. Conclusion

The WTO Agreement that the FCC has so strongly supported is dramatically altering the landscape of the international telecommunications market. The FCC wisely recognizes that the ISP and its related filing requirements, relics of the monopoly era, no longer protect U.S. carriers, but may actually threaten the WTO Agreement's significant momentum towards a liberalized international market. However, given that the global market is not yet fully competitive, and opportunities for the exercise of market power still remain, it is crucial that the FCC continue to maintain certain competitive safeguards to deter potential anticompetitive conduct. Therefore, balancing its reduced regulatory oversight of competitive arrangements with strong, tailored safeguards will effectively advance a truly competitive international telecommunications market that will ultimately inure to the benefit of U.S. consumers.

Respectfully submitted,

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